

REMARKS

The applicant respectfully request reconsideration in view of the amendment and the following remarks. The applicant has amended claims 1 and 11-13 as suggested by the Examiner in order to overcome the 35 U.S.C. 112, second paragraph rejections. Support for newly added claims 14-20 can be found in the specification at page 5, lines 21-32. No new matter has been added. Claims 1-20 are pending in the application.

Claims 1-13 were rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-13 are also rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 7,084,294 (“ ‘294 patent”). The applicant respectfully traverses these rejections.

35 U.S.C. 112 Rejection

Claims 1-13 were rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has amended claims 1 and 11-13 as suggested by the Examiner in order to overcome the 35 U.S.C. 112, second paragraph rejections. For the above reasons, this rejection should be withdrawn.

Double Patenting Rejection

Claims 1-13 are also rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of ‘294 patent.

In response, Applicants have filed herewith a Terminal Disclaimer. Accordingly, Applicants respectfully request that the double-patenting rejection be withdrawn.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection. For the above reasons, this rejection should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00008-US from which the undersigned is authorized to draw.

Dated: February 11, 2008

Respectfully submitted,

Electronic signature: /Ashley I. Pezzner/
Ashley I. Pezzner
Registration No.: 35,646
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P. O. Box 2207
Wilmington, Delaware 19899-2207
(302) 658-9141
(302) 658-5614 (Fax)
Attorney for Applicant